

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: RAILWAY INDUSTRY
EMPLOYEE NO-POACH ANTITRUST
LITIGATION

This Document Relates to:
ALL ACTIONS

Master Docket: Misc. No. 18-798

MDL No. 2850

MAJORITY PLAINTIFFS' MOTION FOR APPOINTMENT OF CO-LEAD COUNSEL

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September 11, 2018

Twenty-one plaintiffs and their counsel ask that the Court appoint Hausfeld LLP, Berger Montague PC, and Robins Kaplan LLP (collectively, “Majority Counsel”) together as co-lead counsel because they satisfy the applicable criteria under Fed. R. Civ. P. 23(g), in that they:

- are supported by **21 out of the 29 plaintiffs** (“Majority Plaintiffs”), **17 out of the 25 actions**,¹ and **39 out of the 52 law firms** (including many who would be capable of leading the case in their own right), a clear referendum on our ability to lead this matter;²
- filed the first complaints in this proceeding, and successfully moved to centralize and consolidate the related actions in this Court;
- interviewed confidential witnesses at length and retained key economic experts;
- are supported by numerous distinguished members of the Pittsburgh legal community, including proposed liaison counsel John Evans (J.C. Evans Law);
- have unmatched antitrust experience and success in antitrust MDLs, including with bench and jury trials and multi-day pre-trial evidentiary hearings; and
- have specific experience in no-poach litigation (*e.g.*, *In re High-Tech Employee Antitrust Litig.* (“*High Tech*”); *O’Bannon v. NCAA*; *Haff Poultry Inc. v. Tyson Foods Inc.*), and other antitrust MDLs on behalf of workers alleging anticompetitive pay suppression;

Majority Counsel are among the world’s pre-eminent plaintiffs’ antitrust firms, as recognized by numerous legal and non-legal publications.³ The lead lawyers from each Majority Counsel firm are leaders in the field.⁴ For instance:

¹ Of the eight cases that do not support our proposal, five were filed by the same law firm: Lieff Cabraser Heimann & Bernstein, LLP.

² Attached as Exhibit A is a chart identifying the cases and law firms supporting Majority Counsel’s application. Exhibits B-D are the resumes for the three proposed co-lead law firms.

³ *Chambers and Partners* has ranked Hausfeld and Robins Kaplan in its highest “Band 1” tier for “Antitrust: Plaintiff – USA – Nationwide,” while *The Legal 500* has ranked Hausfeld and Berger Montague in its highest “Tier 1” for “Civil Litigation/Class Actions: Plaintiff.” ***No other law firm in this litigation enjoys the same rankings.***

⁴ Collectively, we have 21 offices worldwide, comprising over 400 lawyers (including more than 100 focused principally on antitrust litigation). Robins Kaplan has extensive litigation support resources in-house—including its Financial and Economic Consultants and E-discovery and Trial Support Groups. Hausfeld has two offices in Germany focused on competition law, relevant because one of the two principal defendants, Knorr-Bremse AG, is located in Munich

- **Hollis Salzman (Robins Kaplan)** has over two decades of antitrust MDL experience. Ms. Salzman serves as co-lead counsel in the massive *In re Automotive Parts Antitrust Litig.*, No. 2:12-md-2311 (E.D. Mich.), a sprawling MDL with over 150 defendants and 40 separate coordinated actions, with more than \$1 billion in settlements to date, but just a handful of cases remaining. In the decade-long *Air Cargo* case, Ms. Salzman helped spearhead its every facet, leading to over \$1.2 billion in settlements. No. 1:06-md-1775 (E.D.N.Y.). She has been nationally recognized by *Chambers USA* as “always well prepared and savvy – she knows what’s important and what isn’t and she works very hard at it” and “a primary figure on the plaintiffs’ side in a number of major cartel investigations.” *The Legal 500* described her as “outstanding” and “extremely intelligent with an uncanny ability to control situations to protect her client[s].” She was a finalist for the *National Law Journal*’s inaugural “Elite Women of the Plaintiff’s Bar” award.
- **Sathya Gosselin (Hausfeld)** has significant MDL antitrust expertise that spans numerous industries, including the rail industry from his decade-long experience directing, as co-lead class counsel, *In re Rail Freight Fuel Surcharge Antitrust Litig.*, No. 1:07-mc-489 (D.D.C.). In the landmark *O’Bannon v. NCAA* litigation, he examined and cross-examined witnesses at trial, deposed senior NCAA executives, briefed complex constitutional issues advanced by the NCAA and television networks, and negotiated a \$40 million settlement. No. 09-cv-3329 (N.D. Cal.). *Law360* has recognized his leadership in class-action litigation, noting his “adept skill set,” “penchant for high-stakes litigation,” and “close attention to detail.” *The Legal 500* has likewise recommended him for antitrust civil litigation, citing him as a “heavyweight practitioner” who “works on the most complex cases brilliantly.” He has won numerous awards, including Outstanding Antitrust Litigation Achievement in Private Law Practice, American Antitrust Institute (2015); Litigation of the Year – Non-Cartel Prosecution, *Global Competition Review* (2015); and Finalist, Lawyer of the Year – Under 40, *Global Competition Review* (2017).
- **Eric L. Cramer (Berger Montague)** was named Philadelphia’s “Lawyer of the Year” in 2018 for his work in antitrust by *Best Lawyers in America*. Chambers & Partners has repeatedly ranked him as a top-tier antitrust lawyer in Pennsylvania and nationally, observing that he is “really a tremendous advocate in the courtroom, with a very good mind and presence.” In 2017, he won the American Antitrust Institute’s Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice for his work in *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.), a class action on behalf of a class of healthcare providers that resolved for \$61.5 million. He has published widely in the areas of antitrust and class actions with two of his articles having been cited and quoted by the First and Third Circuits.

Our Collective Class-Action Trial Experience is unrivaled, including as follows:

- *In re Vitamin C Antitrust Litig.*, No. 1:06-md-1738 (E.D.N.Y.), which resulted in a judgment for \$162 million following a three-week jury trial as well as a recent unanimous

and conspiratorial conduct is alleged to have occurred overseas. Berger Montague also has extensive litigation resources, including, *e.g.*, its own internal e-discovery platform.

Supreme Court victory for plaintiffs.

- *O'Bannon v. NCAA*, No. 09-cv-3329 (N.D. Cal.), which yielded permanent injunctive relief that fundamentally transformed college athletics and has led to an increase in Division I athletic scholarships of approximately \$100 million per year. It has been widely hailed as one of the most important antitrust cases in the last decade.
- *In re Processed Egg Products Antitrust Litig.*, No. 2:08-md-2002 (E.D. Pa.), in which a jury found that one of the defendants had participated in a conspiracy to reduce supply. (Prior to trial, the plaintiffs secured over \$135 million in total settlements.)
- *Ross v. Am. Express Co.*, 35 F. Supp. 3d 407, 457 (S.D.N.Y. 2014), alleging that credit card companies and banks colluded to force consumers to settle disputes in arbitration. After a five-week bench trial, the court commended the “extraordinary talents of Plaintiffs’ counsel.”
- *In re Lorazepam and Clorazepate Antitrust Litig.*, MDL No. 1290 (D.D.C.), resulted in a \$76.8 million jury verdict on behalf of three health insurers who overpaid for prescription drugs because of the exclusion of generic competition (plus \$147 million in settlements).
- *Meijer, Inc. v. Abbott Labs.*, No. 4:07-cv-5985 (N.D. Cal.), in which a class of drug buyers settled for \$52 million after three days of jury trial.
- *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827 (N.D. Cal.), resulted in a \$7.5 million verdict after a 7-week-jury trial (plus \$400 million in settlements).
- *Cook v. Rockwell International*, No. 1:90-cv-00181 (D. Colo.), resulted in a \$554 million jury verdict—the largest ever in Colorado—on behalf of thousands of property owners whose homes were exposed to plutonium and other toxins.
- *Exxon Valdez Oil Spill Litig.*, No. 3:89-cv-0095 (D. Alaska), in which, after months of trial, a jury awarded \$5 billion in punitive damages (reduced to \$507.5 million).

Lead Counsel and MDL Experience: Collectively, Majority Counsel have been appointed lead counsel in hundreds of complex antitrust matters, spanning dozens of industries, including transportation (and in rail specifically, as in *In re Rail Freight Fuel Surcharge Litig.*, No. 1:07-mc-00489 (D.D.C.)); healthcare; pharmaceuticals; financial services; sports; packaged food; and electronics. Many of those cases showcase our representation of employees or other workers—like the railway workers here—seeking recovery for injuries in the form of suppressed wages due to collusion or other forms of anticompetitive conduct in class-action litigation. For

instance, Berger Montague lawyers, including Mr. Cramer, worked closely with co-lead counsel and the plaintiffs' experts in *High Tech*, a case that involved no-poach agreements. No. 5:11-cv-2509 (N.D. Cal.). Berger Montague and Hausfeld are currently co-lead counsel in two antitrust cases on behalf of chicken growers, *Haff Poultry Inc. v. Tyson Foods Inc.*, No. 6:17-cv-00033 (E.D. Okla.) and *Haff Poultry Inc. v. Koch Foods Inc.*, No. 4:18-cv-00030 (E.D.N.C.), which allege no-poach agreements, among other anticompetitive conduct. Berger Montague is currently co-lead counsel in an antitrust class action on behalf of mixed martial arts athletes, *Le v. Zuffa, LLC*, No. 15-cv-1045 (D. Nev.), and served as co-lead counsel in *Johnson v. Arizona Hospital & Healthcare Association*, No. 2:07-cv-1292 (D. Ariz.), which resulted in settlements totaling more than \$23 million for nurses whose wages were suppressed through wage-fixing.⁵

Further, numerous courts have appointed us *jointly*. In *Air Cargo*, No. 1:06-md-1775 (E.D.N.Y.), for example, Judge Gleeson appointed Hausfeld and Robins Kaplan as two of four co-leads, and that teamwork produced 28 settlements totaling more than \$1.2 billion. Further, Robins Kaplan and Berger Montague serve as two of three Co-Leads in *In re Payment Card Interchange Fee Litig.*, No. 1:05-md-1720 (E.D.N.Y.), in which an agreement in principle was just reached to settle this huge antitrust MDL on behalf of thousands of merchants. Just last month, Hausfeld and Berger Montague, acting as two of four co-lead counsel, achieved a superlative result in *In re Dental Supplies Antitrust Litig.*, No. 1:16-cv-696 (E.D.N.Y.), where, after class-certification briefing closed, the defendants tentatively agreed to settle for \$80 million. And in the last two major antitrust class actions in this district, *In re Flat Glass*, No. 98-

⁵ This Court has appointed Berger Montague lead counsel three times in employment-related class cases: *McGeary v. North American Pipeline Inspection, LLC*, No. 2:14-cv-00992-JFC (W.D. Pa. Dec. 22, 2015); *Niver v. Specialty Oilfield Sols.*, No. 14-1599-JFC (W.D. Pa. Oct. 7, 2015); and *Caudell v. RDL Energy Services*, No. 2:11-cv-01523-JFC (W.D. Pa. Jul. 30, 2012).

3498, and *In re Flat Glass II*, No. 08-mc-180, Judge Ambrose appointed Michael Hausfeld as co-lead counsel, joined in the second litigation by current Robins Kaplan partner Hollis Salzman (at her former firm), resulting in combined total settlements of \$83.7 million.

All told, our firms have achieved **over \$10 billion** in class-action antitrust settlements and judgments in the last decade, a figure that no other firms in this case can rival. Most recently:

- **Robins Kaplan** has negotiated more than \$1 billion in settlements in *In re Automotive Parts Antitrust Litig.*, which is one of the largest amounts that indirect purchaser “end payors” have ever recovered in a U.S. antitrust matter, while also obtaining the largest known antitrust class action settlement in the absence of a DOJ investigation in *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass.) (nearly \$600 million).
- **Berger Montague** successfully co-led: *In re Domestic Drywall Antitrust Litig.*, 2:13-md-2437 (E.D. Pa.) (\$190 million in settlements), in which Judge Baylson commended the firm’s and Mr. Cramer’s work as “sophisticated,” “highly professional,” and “imaginative”; *Castro v. Sanofi Pasteur Inc.*, No. 2:11-cv-7178 (D.N.J.) (2017) (\$61.5 million in settlements), for which Judge Arleo praised Mr. Cramer as follows: “I just want to thank you for an outstanding presentation. I don’t say that lightly . . . it’s not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don’t see lawyering like this every day in the federal courts, and I am very grateful”; and *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797 (E.D. Pa.) (\$612 million in settlements).
- **Hausfeld** has (1) negotiated new settlements totaling \$340 million in *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 1:11-md-2262 (S.D.N.Y.) (following earlier settlements of \$250 million), a historic class action involving manipulation of benchmark interest rates; (2) secured final approval of settlements totaling \$2.3 billion in *In re Foreign Exchange Antitrust Litig.*, 1:13-cv-7789 (S.D.N.Y.), another landmark class action concerning manipulation of foreign-currency exchange rates; and (3) settled, on the first day of trial, for \$250 million, *Hale v. State Farm*, 3:12-cv-660 (S.D. Ill.), a civil racketeering case in which plaintiffs alleged that State Farm attempted to manipulate the Illinois judiciary in an effort to reverse an earlier \$1 billion jury verdict.

Our Longstanding Efforts in This Case: Since filing the first complaints in April 2018, Majority Counsel have hired leading economic experts in the field; interviewed confidential witnesses at length; responded to many class-member inquiries; and earned the support of the vast majority of plaintiffs and their counsel. Majority Counsel are thus uniquely qualified to lead this litigation.

Dated: September 11, 2018

Respectfully submitted,

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